



City of Aurora, Colorado

2012 Business Tax Symposium

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AGENDA

2012 BUSINESS TAX SYMPOSIUM JULY 6, 2012

1. TYPES OF TAXES
2. NEXUS
3. CONTRACTORS
4. TAX ON CANDY AND SOFT DRINKS
5. SOFTWARE
6. CLOUD COMPUTING
7. ON-LINE FILING
8. WEBSITE AND RESOURCES
9. QUESTIONS



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AURORA AT A GLANCE

HISTORY

- Year Founded: 1891
- Original Name: Fletcher
- Name changed to Aurora in 1907

CITY

- Form of Government: Council - City Manager
- Elected Council Members: 11 (Mayor, 6 Council Ward representatives, and 4 at large members)

AMENITIES:

- Municipal Parks: 108
- Municipal Golf Courses: 7
- Public Libraries: 4
- Reservoirs: 2
- Number of Counties within: 3 (Adams, Arapahoe, and Douglas)
- 9th safest city of its size in the country



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AURORA AT A GLANCE

PHYSICAL FEATURES

- City Area: 154 square miles (80.73 sq. miles developed)
- Official City Elevation: 5,435 feet
- 10,069 acres of parks, open space and trails

POPULATION

- City Population: 325,078
- 58th Largest City in US (Based on Population)
- Estimated Average Annual Growth Rate: 1.76%
- Median Age: 34.5

Estimated Population by Single Race:

- White: 61.1%
- Black: 15.7%
- Asian: 4.9%
- Other 18.3%

Estimated Hispanic/Latino Population:

- Hispanic or Latino: 28.7%
- Not Hispanic or Latino: 71.3%

Average Household Size: 2.58

Median Household Income: \$45,904



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COMBINED TAX RATES FOR AURORA

Finance Department
Tax Section
15151 E. Alameda Parkway
Aurora, Colorado 80012
Phone: 303-739-7800
Fax: 303-739-7559
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City of Aurora Combined Tax Rates Reviewed 1-1-2012



Sales Tax Rate

ARAPAHOE COUNTY	
AURORA:	3.75%
STATE:	2.90%
RTD:	1.00%
CULTURAL FACILITIES:	0.10%
COUNTY:	0.25%
TOTAL:	8.00%

ADAMS COUNTY	
AURORA:	3.75%
STATE:	2.90%
RTD:	1.00%
CULTURAL FACILITIES:	0.10%
COUNTY:	0.75%
TOTAL:	8.50%

DOUGLAS COUNTY	
AURORA:	3.75%
STATE:	2.90%
RTD:	1.00%
CULTURAL FACILITIES:	0.10%
COUNTY:	1.00%
TOTAL:	8.75%

Use Tax Rate

AURORA: 3.75%

ARAPAHOE COUNTY:	0.25%
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Use tax is only assessed on the sales and leases of motor vehicles and for building materials.

ADAMS COUNTY:	Not Applicable
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Does not impose a use tax.

DOUGLAS COUNTY:	1.00%
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Use tax is only assessed on motor vehicles and for building materials. For additional information contact Douglas County at 303-660-7340.

Lodger's Tax Rate

ARAPAHOE COUNTY	
AURORA:	8.00%
STATE:	2.90%
RTD:	1.00%
CULTURAL FACILITIES:	0.10%
COUNTY:	0.25%
TOTAL:	12.25%

ADAMS COUNTY	
AURORA:	8.00%
STATE:	2.90%
RTD:	1.00%
CULTURAL FACILITIES:	0.10%
COUNTY:	0.75%
TOTAL:	12.75%

DOUGLAS COUNTY	
AURORA:	8.00%
STATE:	2.90%
RTD:	1.00%
CULTURAL FACILITIES:	0.10%
COUNTY:	1.00%
TOTAL:	13.00%

Occupational Privilege Tax (OPT)

Employee Tax: \$2.00 a month withheld for each taxable employee
Employer Matching: \$2.00 a month for each taxable employee

Occupation Tax on Local Exchange Phone Service

The amount of \$3.36 per quarter shall be added to each account supplying local exchange telephone service.

Note: Please contact the State of Colorado at (303) 238-7378 for information regarding the State or Cultural Facilities taxes.



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NEXUS

DEFINED:

- ✓ Connect or bind.
- ✓ Presence of a taxpayer in a jurisdiction that allows a jurisdiction to require the taxpayer to collect sales tax.
- ✓ A connection between the vendor and jurisdiction such that subjecting the vendor to the jurisdiction's laws is neither unfair to the vendor nor likely to harm interstate commerce.
- ✓ To the layman, Nexus and sales tax are two unrelated subjects, but in the world of sales tax law, Nexus is everything.
- ✓ A connection or physical presence in a determined location. A link between two business entities by any of the following: employees, agents, sales people, consultants, repair persons, performing or participating in activities such as advertising, owning or renting real and tangible personal property, delivering products and storing, etc.



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NEXUS

Standard for determining Nexus for sales tax is Quill vs. North Dakota (1992):

The Supreme Court ruled that a mail-order seller has no physical presence in the state and that sellers that engage in activity from outside the customer's state are not required to collect the tax.

The decision revolved around two questions:

1. How much physical presence is sufficient to create Nexus?
2. Can Nexus be attributed to the seller through the physical presence of the seller's agent or affiliate?



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NEXUS

City of Aurora defines Nexus through its definition of “engaged in business”.

Section 130-31 of the Aurora City Code.

Engaged in business in the city means performing or providing services or selling, leasing, renting delivering or installing tangible personal property for storage, use or consumption within the city. Engaged in business within the city includes but is not limited to any one of the following activities by a person:

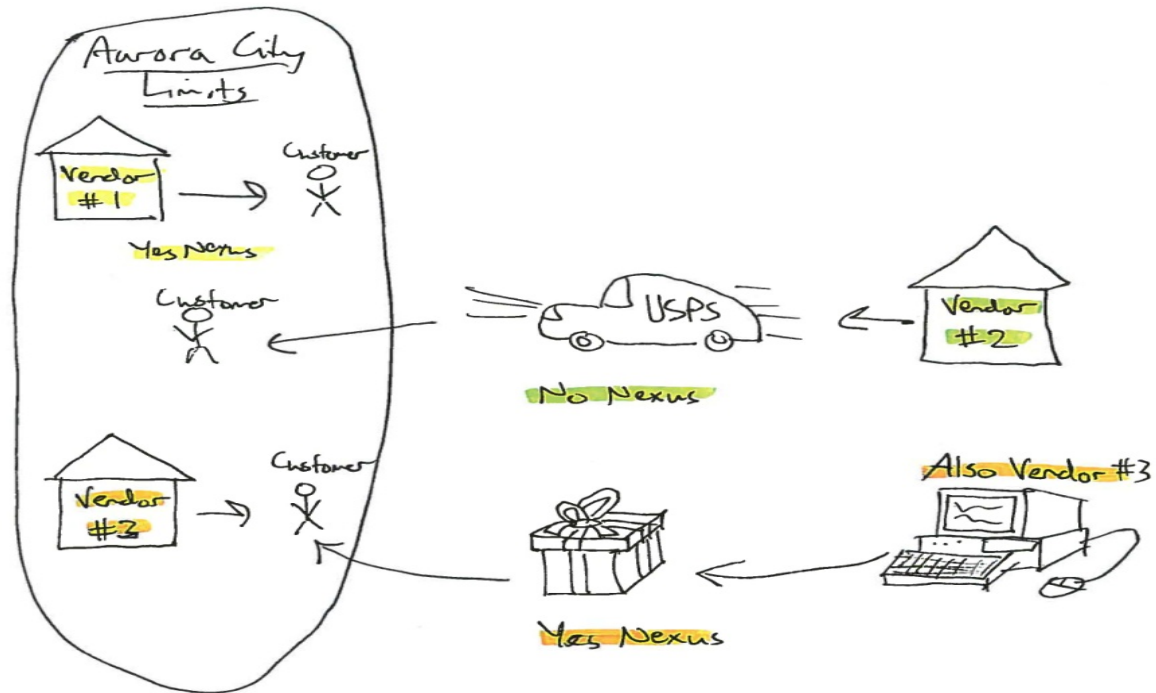
- (1) Directly or indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- (2) Sends one or more employees , agents or commissioned salespersons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of it products, or for demonstration or other reasons;
- (3) Maintains one or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;
- (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- (5) Makes more than one delivery into the taxing jurisdiction within a 12-month period.



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NEXUS

Examples:





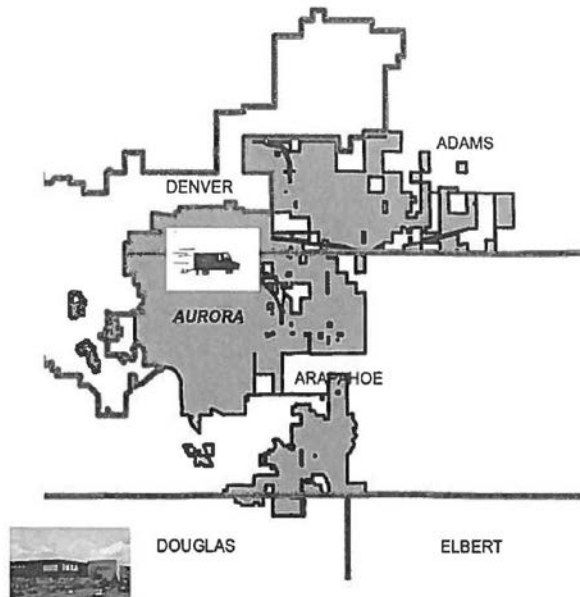
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NEXUS

Example #1

In this example the taxpayer has a location in Douglas County and regularly delivers tangible personal property into the City of Aurora through a common carrier. They have no location or employees located in the City. This taxpayer does not meet the standards for engaged in business in the city and is not required to collect the City of Aurora sales tax.

No Nexus





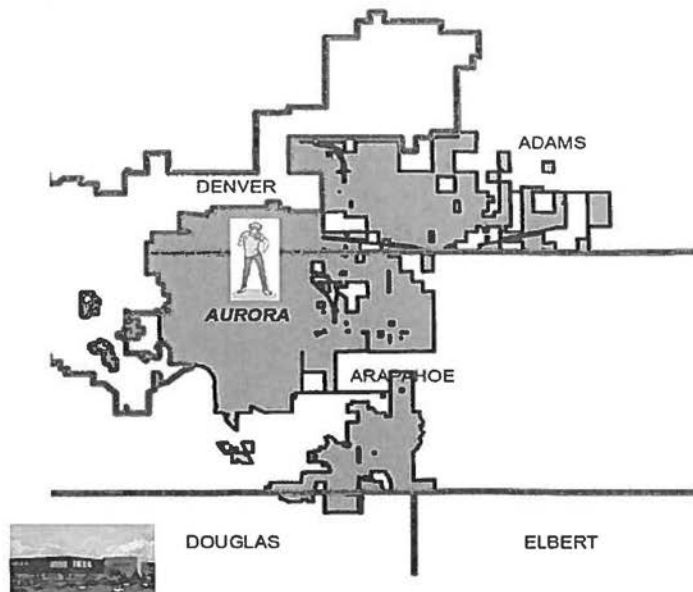
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NEXUS

Example #2

In this example the taxpayer has a location in Douglas County and regularly has commissioned independent contractors solicit sales from customers located in the city. They have no location or company employees located in the City. This taxpayer does meet the standards for engaged in business in the city and is required to collect the City of Aurora sales tax. The commissioned independent contractors are agents of the company and meet the definition of engaged in business in the city.

Nexus





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NEXUS

Example #3

In this example the taxpayer has a location in Douglas County and regularly delivers tangible personal property into the City of Aurora using company vehicles. They have no location or employees located in the City, but regularly advertise on television. This taxpayer does meet the standards for engaged in business in the city and is required to collect the City of Aurora sales tax. Regularly delivering tangible personal property into the city by company trucks meets the definition of engaged in business in the city, which requires more than one delivery into the city within a 12 month period. It has been further defined through a hearing that if a taxpayer has three deliveries into the city would be sufficient for nexus.



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CONTRACTORS

Clearly defines the contractor, owner, lessee jointly and severally responsible for paying additional use tax if due on a completed project. This establishes transparency and notifies all parties of their tax responsibility from the onset.

A written report is required within 90 days of the completion of the project providing final actual costs. Additional use tax is either due or a refund is determined. The contractor, owner, lessee will not be subjected to an audit on a reconciled project. The contractor, owner, lessee will not be assessed penalty and interest on any additional tax due.

Project cost is defined. This facilitates a uniform and consistent application. This definition also educates the taxpayer by outlining the taxable components of a project.

A use tax deposit will be required to be paid when issued a public improvement permit. The tax will be paid to the city where the project is located which has been a long standing practice.

The city must be notified at any time during an on-going project of an exempt status change. The taxpayer will not be assessed penalty and interest if the city is notified on a timely basis.



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CANDY AND SOFT DRINKS

Taxation of Candy and Soft Drinks

Aurora has chosen to define and tax food similar to the state which will ease the burden on local retailers. Aurora removed the tax exemption for candy and soft drinks as grocery items which allows the city to begin collecting Aurora city sales tax of 3.75% on candy and soft drinks similar to what the [state began to do in May 2010](#). The ordinance exempts pre-packaged food items, no matter the serving size or place of sale, but excludes candy and soft drinks. Prepared food remains taxable. This structure is similar to the state's treatment of these items and should provide more consistency for businesses in Aurora.

Effective July 1, 2012, businesses should be charging sales tax on the retail sale of candy and soft drinks. The first monthly tax return to be filed with candy and soft drink tax included will be due August 20, 2012. The first quarterly tax return to be filed will be due October 20, 2012. Please visit our website at www.auroragov.org/taxregs for more details. You can also reach us at 303-739-7800, opt 2 or 3.



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COMPUTER SOFTWARE AND THE CLOUD

PRE-WRITTEN SOFTWARE:

OTHER NAMES: "CANNED" "SHRINK-WRAPPED" "OFF-THE-SHELF"

- ✓ CONSIDERED TANGIBLE PERSONAL PROPERTY
- ✓ TAXABLE REGARDLESS OF THE METHOD OF DELIVERY
- ✓ TAXABLE REGARDLESS OF WHETHER PURCHASED IN TANGIBLE OR INTANGIBLE FORM

MODIFICATIONS TO ANY PRE-WRITTEN SOFTWARE IS STILL TAXABLE. MODIFICATIONS ARE IN THE NATURE OF FABRICATION THAT BECOMES PART OF THE SALES AND ARE TAXABLE. (*AURORA CITY CODE SECTION 130-31 DEFINITIONS; "PRICE OR PURCHASE PRICE" (2)(h)*).



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COMPUTER SOFTWARE AND THE CLOUD

CUSTOM SOFTWARE:

- ✓ INCLUDES DATA PROCESSING PROGRAMS DESIGNED AND/OR CREATED TO MEET THE NEEDS OF A SPECIFIC USER OR SET OF USERS
- ✓ NOT SUBJECT TO TAX
- ✓ MODIFICATIONS TO CUSTOM SOFTWARE ARE NOT TAXABLE
- ✓ CONSIDERED TANGIBLE PERSONAL PROPERTY
- ✓ IF RESOLD BY THE ORIGINAL BUYER, IT IS A COMMODITY AND SUBJECT TO TAX



COMPUTER SOFTWARE AND THE CLOUD

OPTIONAL MAINTENANCE AGREEMENTS

- ✓ TYPICALLY NOT CONSIDERED “SOFTWARE”
- ✓ EXEMPT FROM SALES TAX
- ✓ PRE-WRITTEN UPGRADES THAT ARE NOT SPECIFIC TO THE USER ARE TAXABLE EVEN IF INCLUDED IN THE MAINTENANCE AGREEMENT
- ✓ CHARGES FOR “OPTIONAL” AGREEMENTS ARE NOT TAXABLE IF THE MAINTENANCE CHARGES ARE SEPARATELY STATED ON THE INVOICE
- ✓ IF NOT SEPARATELY STATED, THEN THE TOTAL PRICE FOR BOTH THE PRE-WRITTEN SOFTWARE AND THE MAINTENANCE AGREEMENT ARE TAXABLE
- ✓ IF UPGRADES ARE RECEIVED VIA AN OPTIONAL MAINTENANCE AGREEMENT THE ENTIRE CHARGE FOR THE MAINTENANCE IS TAXABLE UNLESS CHARGE IS SEPARATELY STATED IN THE CONTRACT OR ON THE INVOICE



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COMPUTER SOFTWARE AND THE CLOUD

MANATORY MAINTENANCE AGREEMENTS

- ✓ TYPICALLY INCLUDES ADDITIONAL PERIOD FEES
- ✓ IF FEE IS MANDATORY TO MAINTAIN THE RIGHT TO USE THE SOFTWARE, THEN THE PERIODIC FEE IS SUBJECT TO SALES OR USE TAX
- ✓ IF THE PERIOD FEE IS ONLY FOR TECHNICAL SUPPORT, AND DOES NOT ENTITLE THE CUSTOMER TO UPDATES AND MODIFICAITONS, THEN IT IS NOT TAXABLE



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COMPUTER SOFTWARE AND THE CLOUD

APPLICATION SERVICE PROVIDER (ASP)

- ENTITY THAT RETAINS CUSTODY OVER OR HOSTS SOFTWARE FOR USE BY THIRD PARTIES
- USUALLY ACCESS THE SOFTWARE VIA THE INTERNET
- ASP MAY OR MAY NOT OWN OR LICENSE THE SOFTWARE
- WILL OWN AND MAINTAIN HARDWARE AND NETWORKING EQUIPMENT REQUIRED FOR THE USER TO ACCESS THE SOFTWARE
- MAY CHARGE A LICENSE FEE WHICH IS TAXABLE REGARDLESS OF WHETHER IT IS BILLED AS “SUBSCRIPTION FEE”, “LICENSE FEE”, “SERVICE”, IF THE USER IS LOCATED IN AURORA



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COMPUTER SOFTWARE AND THE CLOUD

MULTIPLE POINTS OF USE:

If a vendor sells taxable software to an Aurora purchaser, and the Aurora purchaser pays the vendor for a quantity of software licenses with the intent to distribute the software to any of the purchaser's locations outside of Aurora, Aurora tax is due on only the licenses that are actually used in Aurora.

The Aurora purchaser needs to provide a written statement regarding the intended usage locations.



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COMPUTER SOFTWARE AND THE CLOUD

OTHER:

Software (owned by taxpayer outside of Aurora) housed on servers (owned by the taxpayer outside of Aurora) in a facility located in Aurora (facility not owned by taxpayer outside of Aurora) is taxed at the invoiced location.

Tax is due where the taxpayer is due, which is outside Aurora.

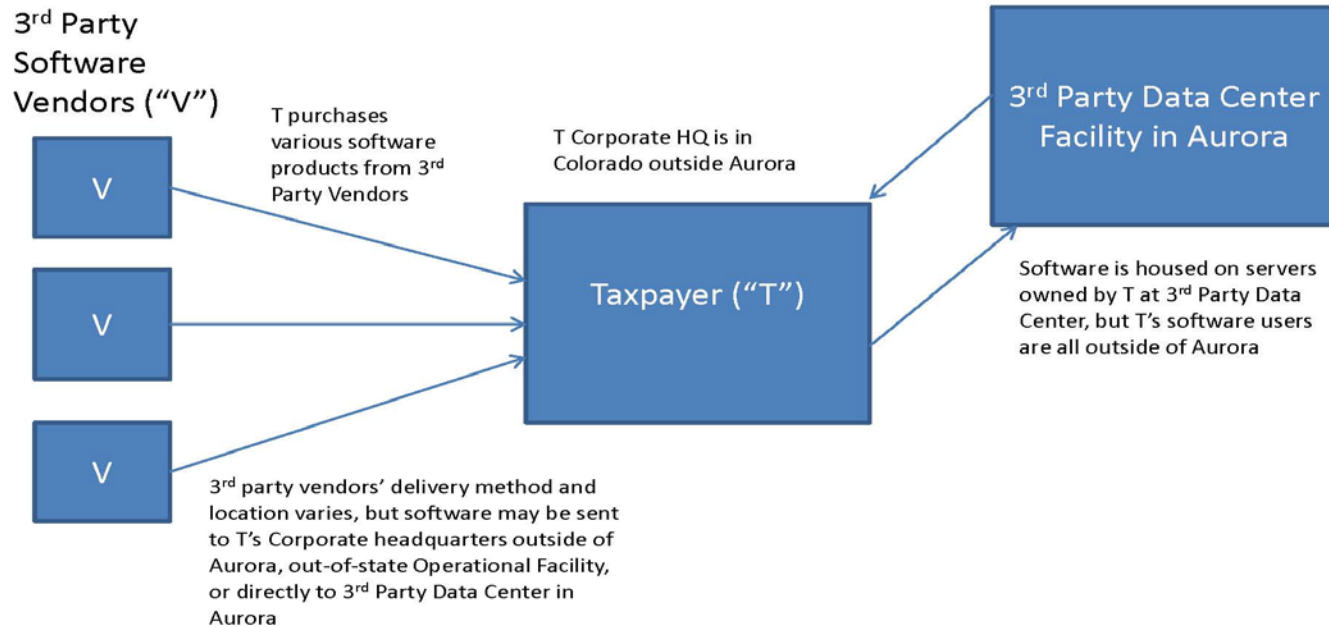
No tax is due to Aurora on the purchase of the software.

No tax is due to Aurora even though the software is located in Aurora, because it is not being used by people located in Aurora..

BUT – the servers located in Aurora are subject to tax.



COMPUTER SOFTWARE AND THE CLOUD

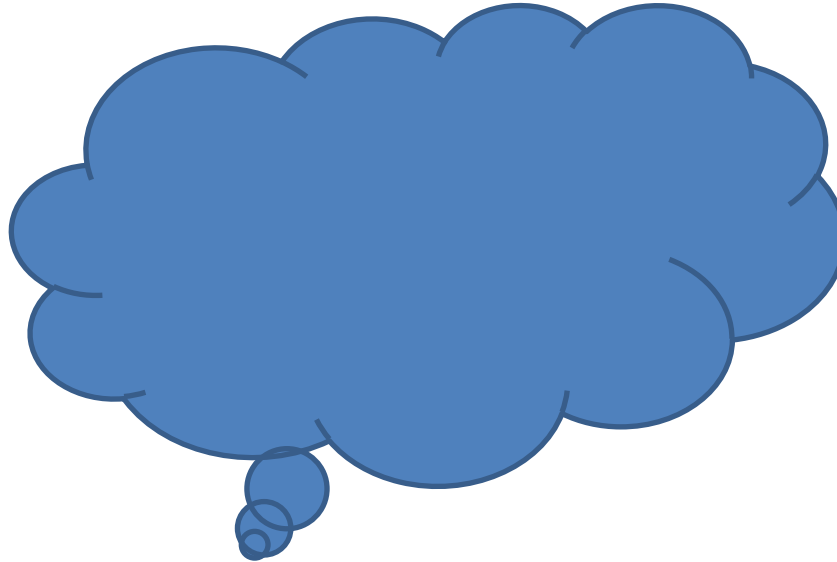




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COMPUTER SOFTWARE AND THE CLOUD

CLOUD??



TAXABLE OR NOT TAXABLE?
OR BOTH?



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COMPUTER SOFTWARE AND THE CLOUD

CLOUD COMPUTING:

General term for anything that involves delivering hosted services over the Internet.

The National Institute of Standards and Technology has defined cloud computing:

Cloud computing is a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, application and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.



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COMPUTER SOFTWARE AND THE CLOUD

- ✓ Three models of cloud computing services:
 - ✓ SaaS— Software as a Service
 - ✓ PaaS – Platform as a Service
 - ✓ IaaS – Infrastructure as a Service
- ✓ Common theme is the lack of an infrastructure maintained by the customer.
- ✓ Each differs in that different levels of restriction are present, but in general most consumers can find a cloud computing service that fits their needs.



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ON-LINE FILING

Sales and Use Tax Online

The city of Aurora offers businesses the ability to file Sales and Use Tax returns and payment via the Internet, eliminating the standard paper return sent through the mail.

Aurora's online tax processing system is operated via a secure website and allows businesses to correspond directly with city staff and update such things as contact information.

Businesses have the option of paying via a checking account debit transaction, or by filing their return online and then mailing a check to the city. As confirmation of the transaction, the city sends the business an email with an attached copy of their return.

Businesses interested in utilizing the Online Sales and Use Tax return processing system should call 303-739-7800 and then select Option 2 to obtain access to online filing, or email a request that includes your account number and business name to

TaxOnlineCorrespondence@auroragov.org. Please be advised that past due returns cannot be filed online at this time.



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STATE PHONE NUMBERS

State of Colorado:

Attorney General(303) 866-4500
General Information(303) 866-5000
Child Care Licensing(303) 866-5958
Colorado Small Business Hotline (303)
592-5920
Department of Revenue:
Division of Motor Vehicles(303) 205-5600
General Information(303) 866-3091
Individual Income Tax Inquiries(303) 238-
3278
Liquor/Tobacco Enforcement(303) 205-
2300
Smoking Ban Information(888) 701-2006
Taxpayer Service(303) 238-7378
Department of Public Health &
Environment (**Vital Records**)(303) 692-
2000

Department of Regulatory Agencies (303)
894-7855
Secretary of State – (**Trade Marks & Trade
Name Registration**)(303) 894-2200
Other Frequently Called Agencies:
Alcohol/Tobacco Tax & Trade Bureau
(877) 882-3277
Aurora Chamber of Commerce(303) 344-
1500
Better Business Bureau(303) 758-2100
Internal Revenue Service
Individual Tax (800) 829-1040
Business Tax (800) 829-4933
Social Security Information(800) 772-1213
Tri County Health Department(303) 341-
9370



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CITY OF AURORA PHONE NUMBERS

City of Aurora:

Access Aurora – (**General Information**)
(303) 739-7000

Business Development Center(303) 326-8690

Building Division – (**Contractor
Licensing,**

Inspections & Permits)(303) 739-7420

Business/Liquor Licensing(303) 739-7057

City Manager's Office – (**Special Use
Permits**) (303) 739-7010

Development Services(303) 739-7497

Fire Department – Non-Emergency (303)
326-8999

Forestry Department – (**Arborist
Licensing**)(303) 739-7177

Neighborhood Services – (**Code
Enforcement, Temporary Food Vendor
Permits**) (303) 739-7280

Planning Department(303) 739-7250

Police Department – Non-Emergency (303)
739-6000

Purchasing/Contracts(303) 739-7100

Taxes – (**Sales/Use/OPT**)(303) 739-7800

Water Bills (303) 739-7388

Adams County:

General Information(303) 659-212

Arapahoe County:

General Information(303) 795-4400

Douglas County:

General Information(303) 660-7400

City of Centennial:

General Information(303)-325-8000

City of Denver:

Business Licenses (720)-913-1311



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WEBSITE INFORMATION

Website Information

Adams County www.co.adams.co.us
Alcohol and Tobacco Tax and Trade
Bureau www.ttb.gov
Arapahoe County www.co.arapahoe.co.us
Aurora Chamber of
Commerce www.aurorachamber.org
Better Business Bureau www.denver.bbb.org
City of Aurora www.auroragov.org
Aurora Business Development
Center www.aurorabdc.com
City of Aurora Municipal
Code www.municode.com
City of
Centennial www.centennialcolorado.com
City of Denver www.denvergov.org
Colorado Business Development
Center www.coloradosbdc.org
Douglas County www.douglas.co.us
Internal Revenue Service www.irs.gov
Social Security Administration www.ssa.gov
Smoking Ban

Information www.smokefreecolorado.org
State of Colorado www.colorado.gov

Attorney
General www.coloradoattorneygeneral.gov
Department of Public Health &
Environment www.cdphe.state.co.us
Department of Regulatory
Agencies www.dora.state.co.us
Department of
Revenue www.colorado.gov/revenue
Department of Revenue –
Taxation www.TaxColorado.com
Sales Tax Rates www.businessstax.state.co.us
Secretary of State www.sos.state.co.us
Tri-County Health Department www.tchd.org



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QUESTIONS

THANK YOU!!!!!!